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Attorney for Plaintiff/Counter-Defendant
James R. Glidewell Dental Ceramics, Inc. dba
Glidewell Laboratories

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAMES R. GLIDEWELL DENTAL
CERAMICS, INC. DBA
GLIDEWELL LABORATORIES, a
California corporation,

Plaintiff/Counter-Defendant

vs.

KEATING DENTAL ARTS, INC., a
California corporation,

Defendant/Counter-Plaintiff.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF LEONARD
TACHNER IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
LEAVE TO AMEND ITS ANSWER A
SECOND TIME With Exhibits 1 and 2**

DECLARATION OF LEONARD TACHNER

I, Leonard Tachner, do hereby declare as follows:

1. I am Plaintiff's counsel in this Action.

- 1 2. On or about March 20, 2012, acting on Plaintiff's behalf, I served on
2 Defendant's then counsel Mark Holland, a First Set of Requests for
3 Production. Among such requests were:

4 **REQUEST NO. 19:**

5 All Documents and Things relating to any likelihood of
6 confusion between KDZ BRUXER and another other
7 designation.

8 **REQUEST NO. 30:**

9 All Documents and Things relating to any instance of
10 actual confusion in connection with the use of the designation
11 KDZ BRUXER.

- 12 3. In his written response served on May 18, 2012, Mr. Holland agreed
13 "to produce records of any and all communications received by
14 Defendant that include the term BRUXIR, BRUXZER and/or
15 BRUXZIR, along with documents and things that confirm the
16 inclusion of those terms are not evidence of any "confusion" by the
17 customers (dentists) ordering Defendant's products". On Monday
18 May 21, Mr. Holland and I met at Defendant Keating's facilities and
19 I was shown, among other things, a list of some 50 orders of KDZ
20 BRUXER products referring to Plaintiff's BRUXZIR[®] trademark
21 and for which phone calls were made by Keating personnel to clarify
22 that the customer wanted or would accept the Keating product and
23 not a Glidewell Laboratories "BRUXZIR" product. Mr. Holland
24 agreed to produce a copy of that list and corresponding order sheets
25 or comparable information showing the customer's identity and why
26 such a call was necessary.

- 1 4. On June 6, I sent an email to Mr. Holland reminding him of his
2 agreement to produce these documents and informing him that I had
3 not yet received them. Mr. Holland, on June 6, stated “they will be
4 served. I hope to send them to you tomorrow.” Two days later I
5 received Mr. Holland’s email message in which he stated “Sorry for
6 a slight further delay. I am trying to confirm that we have located
7 ALL of the docs at issue. I should be able to send them to you this
8 afternoon.”
- 9 5. A disc containing the requested documents was finally served by
10 substitute and current counsel Knobbe, Martens, Olson & Bear, LLP
11 on August 13, 2012, almost five months after they were initially
12 requested. The subject documents consist of more than 50 orders to
13 Defendant Keating from its dentist customers ordering a full contour
14 zirconia crown, many employing Plaintiff’s registered trademark
15 BRUXZIR®. A redacted sample of these documents (one dated May
16 2011) is enclosed herewith as Exhibit 1. (Defendant stamped
17 “Confidential-Attorney’s Eyes Only” on each such document).
18 More than 50 additional such order documents, each employing
19 BRUXZIR or other confusion-based versions of Plaintiff’s
20 trademark were served in August. The latest date on such documents
21 (a redacted sample thereof enclosed herein as Exhibit 2) is May
22 2012. Clearly, Defendant had accumulated all of these 50+ confused
23 orders and retained them in its possession during the period May
24 2011 to May 2012. At no time during that extensive period,
25 including virtually the first ten months of this Action after Plaintiff
26 filed its Complaint, (Plaintiff filed on August 31, 2011) had
27 Defendant asserted any allegation of genericness of Plaintiff’s mark
28

1 BRUXZIR®. Only now does Defendant Keating assert the defense
2 of alleged genericness of BRUXZIR® relying primarily on those
3 same documents which substitute counsel claims to be newly
4 discovered evidence.

5
6 I declare under penalty of perjury, under the laws of the United States of
7 America, that the foregoing is true and correct.

8
9
10 Dated September 19, 2012

Respectfully submitted,

11 /s/ Leonard Tachner/
12 Leonard Tachner
13 Attorney for Plaintiff/Counter-Defendant
14 James R. Glidewell Dental Ceramics, Inc.
15 dba Glidewell Laboratories
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Phone: (949) 955-2100 Fax: (949) 955-2199
16881 Hale Avenue, Irvine, CA 92606
E-mail: shade@keatingdentalarts.com
www.keatingdentalarts.com

RX SPECIFIC INSTRUCTIONS
*STANDARD UNLESS SPECIFIED.

Crown #3

Bruxer crown

Shade: C1.5
Any aesthetic
please call.

Signature: *[Signature]*

D.D.S. License #: 12033

TERMS: Customer agrees to company policy as stated on reverse.

Age: _____ Sex: _____
☐ Dr. to Die Trim ☐ Metal Try-In
☐ Finish to Porcelain
Please indicate the distribution of hues
and the types of characterizations desired:

SHADE INSTRUCTIONS

Vita Lumin: _____ Vita 3D: _____
Chromocop: _____ Stamp Shade: _____
Mettake: _____ Other: _____



BUCCAL COLLAR DESIGN
☐ Hairline or _____ mm on Buccal
☐ Porcelain Junction Margin*
☐ Porcelain Butt Margin (90 shoulder req.)

METAL DESIGN

☐ All Porcelain coverage
☐ Metal Coping with Porcelain coverage*
☐ Metal Coping excluding Buccal CUSP
☐ Metal Occlusal including Buccal CUSP

PONTIC DESIGN

☐ Sanitary ☐ Full Ridge Lap ☐ Mutilated Ridge Lap* ☐ Butler ☐ Ovals

ANTERIOR DESIGN

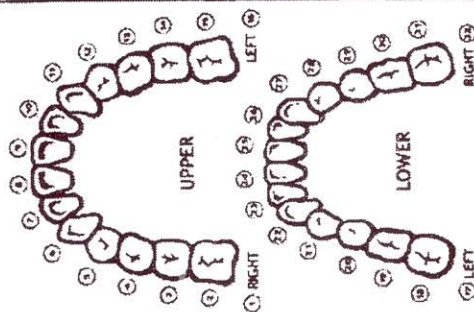
☐ 1/4 Metal Lingual ☐ 1/2 Metal Lingual ☐ 3/4 Metal Lingual

OCCUSAL STAINING

☐ None ☐ Medium ☐ Dark
☐ Light*

IF NO OCCUSAL CLEARANCE

☐ Metal Occlusion
☐ Reduction Coping
☐ Spot Opposing
☐ Make Permanent Note



Included: Crown impression

NUS

Doctor's Account # _____ Phone # () _____

Dr. _____

PLEASE PRINT CLEARLY

Patient _____

LAST

FIRST

Toll Free: (800) 433-9833 Date Due In Office 5-10-11

PLEASE SEND THE FOLLOWING
☐ RX forms ☐ Mailing Labels
☐ Boxes

SPECIAL ENCLOSURES LAB USE ONLY
☐ Photo (s) ☐ Analog
☐ Models ☐ Implant Parts
☐ Shade Tab ☐ Impression I
☐ Bite ☐ Other _____

PFM <input type="checkbox"/> Fused to Non-Precious* <input type="checkbox"/> Fused to Semi-Precious <input type="checkbox"/> Fused to White High Noble <input type="checkbox"/> Fused to Yellow High Noble <input type="checkbox"/> Fused to Captrak	IMPLANTS <input type="checkbox"/> Porcelain fused to Semi-Precious* <input type="checkbox"/> Porcelain fused to White High Noble <input type="checkbox"/> Porcelain fused to Yellow High Noble <input type="checkbox"/> Porcelain fused to Captrak <input type="checkbox"/> Procera All-Ceramic <input type="checkbox"/> KDZ Zirconia <input type="checkbox"/> Procera Custom Abutment: <input type="checkbox"/> Titanium <input type="checkbox"/> Ceramic <input type="checkbox"/> Atlantis Custom Abutment: <input type="checkbox"/> Titanium* <input type="checkbox"/> Ceramic <input type="checkbox"/> 3i Enclude	ALL-CERAMIC <input type="checkbox"/> KDA Full Veneer <input type="checkbox"/> Stacked Feldspathic <input type="checkbox"/> IPS e.max* <input type="checkbox"/> IPS Empress* Esthetic	THERMOFORMED <input type="checkbox"/> Soft Nightguard <input type="checkbox"/> Bleaching Tray <input type="checkbox"/> Hard Night Guard <input type="checkbox"/> Hard Night Guard <input type="checkbox"/> Ultra Guard <input type="checkbox"/> Clear Splint (Flexible) <input type="checkbox"/> Pro-Guard
CAD/CAM <input type="checkbox"/> KDZ Zirconia <input type="checkbox"/> Procera Zirkon	COMPOSITES <input type="checkbox"/> Gradia	KDA-TEMP Abutments #s _____ Pontics #s _____ <input type="checkbox"/> Wire* <input type="checkbox"/> Cast Metal Frame <input type="checkbox"/> Splinted <input type="checkbox"/> Individual	REMOVABLES <input type="checkbox"/> KDA Denture <input type="checkbox"/> KDA Premium Denture <input type="checkbox"/> KDA Ultra Premium Denture <input type="checkbox"/> Cast Chrome Frame <input type="checkbox"/> Setup Teeth in Wax <input type="checkbox"/> Partial Framework to Finish

CONFIDENTIAL
ATTORNEY'S EYES ONLY

KDA-000642

CONFIDENTIAL ATTORNEY'S EYES ONLY



SHAFF

Doctor's Account # _____

Phone # () _____

Dr. _____

PLEASE PRINT CLEARLY

Patient _____

LAST

FIRST

Date Due in Office May 11, 2012

PLEASE SEND:

☐ RX forms ☐ Boxes ☐ Mailing labels

ENCLOSURES

LAB USE ONLY

☐ Photo(s) ☐ Analog ☐ Models☐ Implant parts ☒ Impression ☒ Bite☐ Shade tab ☐ Other _____

RX SPECIFIC INSTRUCTIONS

* Standard unless specified

Please find full contour boxes in crown. Reduced maximum amount on top. Should be plenty of clearance. On setting must with bite plane.

Shay

Signature: _____

License #: 657

TERMS: Customer agrees to company policy as stated on reverse.

Age: _____ Sex: _____

☐ Dr. to die trim ☐ Metal try-in☐ Finish to porcelain

Please indicate the distribution of lines and the types of characteristics desired:

SHADE INSTRUCTIONS

Vita-Lumin: _____

Noritake: _____

Vita-3D: A3

Stump shade: _____



PFM <input type="checkbox"/> Non-precious* <input type="checkbox"/> Semi-precious <input type="checkbox"/> White high noble <input type="checkbox"/> Yellow high noble <input type="checkbox"/> Captek™		IMPLANTS <input type="checkbox"/> PFM-- Semi-precious* <input type="checkbox"/> PFM-- White high noble <input type="checkbox"/> Full cast yellow semi-precious <input type="checkbox"/> Captek™ <input type="checkbox"/> High noble 56 <input type="checkbox"/> KDZ Max <input type="checkbox"/> KDZ Ultra <input type="checkbox"/> IPS® e.max <input type="checkbox"/> ABUTMENT <input type="checkbox"/> Atlantis™ <input type="checkbox"/> Titanium* <input type="checkbox"/> Gold-hue <input type="checkbox"/> Zirconia <input type="checkbox"/> Titanium <input type="checkbox"/> Zirconia <input type="checkbox"/> Gold anodized <input type="checkbox"/> Custom UCLA		METAL-FREE RESTORATIONS KDZ Family (CAD/CAM) <input checked="" type="checkbox"/> KDZ Bruxer <input type="checkbox"/> KDZ Max <input type="checkbox"/> KDZ Ultra* <input type="checkbox"/> ProCera® Pressables <input type="checkbox"/> IPS® Empress Esthetic <input type="checkbox"/> Stained & glazed only* <input type="checkbox"/> Cut-back & layered <input type="checkbox"/> Stump shade required <input type="checkbox"/> IPS® e.max <input type="checkbox"/> Stained & glazed only* <input type="checkbox"/> Cut-back & layered <input type="checkbox"/> Stump shade required Veneers <input type="checkbox"/> KDA Foil Veneers (Stacked leucopathic porcelain) <input type="checkbox"/> IPS® Empress Esthetic* <input type="checkbox"/> IPS® e.max <input type="checkbox"/> Stump shade required		KDA TEMPS <input type="checkbox"/> Diagnostic wax-up Abutments #s: _____ Pontics #s: _____ <input type="checkbox"/> Wire* <input type="checkbox"/> Cast metal frame <input type="checkbox"/> Splinted <input type="checkbox"/> Individual		APPLIANCES <input type="checkbox"/> Night Guard - Astron CLEARsplint™ <input type="checkbox"/> Night Guard - Hard Thermoformed <input type="checkbox"/> Bleaching Tray <input type="checkbox"/> Foam liner <input type="checkbox"/> Reservoir <input type="checkbox"/> Clear Pro-Guard <input type="checkbox"/> Night Guard - Hard Hand Waxed <input type="checkbox"/> Night Guard - Soft <input type="checkbox"/> Ultra Guard (hard/soft) <input type="checkbox"/> 1.0 ml Clear Ortho Retainer	
FULL CAST <input type="checkbox"/> High Noble 56-Type III <input type="checkbox"/> Gold Inlay/onlay-Type II (JRV7) <input type="checkbox"/> White High Noble <input type="checkbox"/> White semi-precious <input type="checkbox"/> Yellow semi-precious		REMOVABLES <input type="checkbox"/> TCS®/Valplast® <input type="checkbox"/> Partial Complete <input type="checkbox"/> TCS®/Bego <input type="checkbox"/> Valplast®/Bego <input type="checkbox"/> Cast chrome <input type="checkbox"/> Acrylic stayplate <input type="checkbox"/> Delineator™ <input type="checkbox"/> KDA Denture <input type="checkbox"/> KDA Premium Denture <input type="checkbox"/> KDA Ultra Premium Denture <input type="checkbox"/> Locator retained <input type="checkbox"/> Bar retained <input type="checkbox"/> Screw retained hybrid <input type="checkbox"/> (Titanium bar)		OCCLUSAL STAINING <input checked="" type="checkbox"/> None <input type="checkbox"/> Light* <input type="checkbox"/> Medium <input type="checkbox"/> Dark		PONTIC DESIGN <input type="checkbox"/> Modified ridge lap* <input type="checkbox"/> Full ridge lap <input type="checkbox"/> Sanitary <input type="checkbox"/> Bulb <input type="checkbox"/> Ovate			
BUCCAL COLLAR DESIGN <input type="checkbox"/> Hairline or _____mm buccal <input type="checkbox"/> Porcelain junction margin* <input type="checkbox"/> Porcelain butt margin (90° shoulder required)		IF NO OCCLUSAL CLEARANCE <input type="checkbox"/> Metal occlusion <input type="checkbox"/> Replication coping <input type="checkbox"/> Spot opposing <input type="checkbox"/> Make permanent note		ANTERIOR DESIGN <input type="checkbox"/> 1/4 Metal <input type="checkbox"/> 1/2 Metal <input type="checkbox"/> 3/4 Metal <input type="checkbox"/> Full Metal		REMOVABLES <input type="checkbox"/> TCS®/Valplast® <input type="checkbox"/> Partial Complete <input type="checkbox"/> TCS®/Bego <input type="checkbox"/> Valplast®/Bego <input type="checkbox"/> Cast chrome <input type="checkbox"/> Acrylic stayplate <input type="checkbox"/> Delineator™ <input type="checkbox"/> KDA Denture <input type="checkbox"/> KDA Premium Denture <input type="checkbox"/> KDA Ultra Premium Denture <input type="checkbox"/> Locator retained <input type="checkbox"/> Bar retained <input type="checkbox"/> Screw retained hybrid <input type="checkbox"/> (Titanium bar)			

CONFIDENTIAL ATTORNEY'S EYES ONLY

KDA-002019

PROOF OF SERVICE

I am a resident of the state of California, I am over the age of 18 years, and I am not a party to this lawsuit. My business address is 17961 Sky Park Circle, Suite 38-E, Irvine, California 92614. On September 19, 2012, I served the following document(s) in the manner indicated:

1. DECLARATION OF LEONARD TACHNER IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR
LEAVE TO AMEND ITS ANSWER A SECOND TIME
With Exhibits 1 and 2

- ☒ via electronic means by the Court's electronic filing system CM/ECF.
- ☐ by placing the document(s) listed above in a sealed envelope to the person at the address set forth below by postage prepaid United States First Class United States mail on the same date set out below.

Lynda J. Zadra-Symes
Jeffrey L. Van Hoosear
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, Fourteenth Floor
Irvine, CA 92614

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed September 19, 2012 at Irvine, California.

By: /s/ Jodie Miller

Jodie Miller

Case No.: SACV11-01309-DOC(ANx)
CERTIFICATE OF SERVICE